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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JUAN ANTONIO GONZALEZ, Defendant and Appellant.	B208965 (Los Angeles County Super. Ct. No. KA082573

APPEAL from a judgment of the Superior Court of Los Angeles County, Daniel J. Buckley, Judge. Affirmed.

Linda L. Gordon, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Keith H. Borjon and John R. Gorey, Deputy Attorneys General, for Plaintiff and Respondent.

Juan Antonio Gonzalez appeals from the judgment entered following the denial of his motion to suppress evidence, his no contest plea to possession for sale of a controlled substance, methamphetamine (Health & Saf. Code, § 11378), and his admission that he suffered a prior conviction for possession for sale of a controlled substance within the meaning of Health and Safety Code section 11370.2, subdivision (c)). He was sentenced to prison for a total of five years, consisting of the middle term of two years, plus three years for the prior conviction enhancement. He contends the trial court erred in denying his motion to suppress because the officer's reasonable suspicion determination relied on an anonymous tip lacking sufficient indicia of reliability and because there were no specific articulable facts to cause the officer to reasonably suspect appellant of criminal activity. For reasons stated in the opinion, we affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

The evidence at the motion to suppress pursuant to Penal Code section 1538.5 established that on March 24, 2008, at approximately 1:00 a.m., El Monte Police Officer Randall Marsh went to an address on Baldwin Avenue in El Monte in response to a radio call of a possible suspect sitting in front of the location selling narcotics. Appellant was one of three individuals sitting on the staircase of a porch attached to a trailer at that location. As Officer Marsh approached them, he asked them to stand up so that he could see their hands. He asked the individuals if they had any narcotics or weapons on them. The female and one of the men answered, "No." Appellant responded, "Yes, I do." Appellant was not in handcuffs and Officer Marsh did not have his gun drawn. The officer was in uniform and had arrived in a marked car but its sirens and lights were not on. In response to Officer Marsh's question regarding what appellant "had on him," appellant stated he had "meth in [his] pocket in [his] pants." Officer Marsh asked appellant exactly where the methamphetamine was and appellant stated it was in the right, front pants pocket in a cigarette box. After getting appellant's permission to retrieve the cigarette box, the officer did so and handed it to his partner, who had just arrived. Methamphetamine and a couple of straws with residue were inside the cigarette

box.[1] While retrieving the cigarette box, another small plastic baggie containing other smaller plastic baggies came out of the pocket. In the same pocket, Officer Marsh found a small digital scale. The officer found approximately $200 in cash on appellant. Based on the items found on appellant, Officer Marsh opined the methamphetamine was possessed for sale.

The only information Officer Marsh had about any activity at the location was from the radio dispatch, and he did not have a warrant. Officer Marsh was standing on a street within the trailer park, approximately five feet from where the individuals were sitting. There was no fencing around the trailer.

DISCUSSION

"'An appellate court's review of a trial court's ruling on a motion to suppress is governed by well-settled principles. [Citations.] [¶] In ruling on such a motion, the trial court (1) finds the historical facts, (2) selects the applicable rule of law, and (3) applies the latter to the former to determine whether the rule of law as applied to the established facts is or is not violated. [Citations.] "The [trial] court's resolution of each of these inquiries is, of course, subject to appellate review." [Citations.] [¶] The court's resolution of the first inquiry, which involves questions of fact, is reviewed under the deferential substantial-evidence standard. [Citations.] Its decision on the second, which is a pure question of law, is scrutinized under the standard of independent review. [Citations.] Finally, its ruling on the third, which is a mixed fact-law question that is however predominantly one of law, . . . is also subject to independent review.' [Citation.]" (*People v. Alvarez* (1996) 14 Cal.4th 155, 182, quoting *People v. Williams* (1988) 45 Cal.3d 1268, 1301; accord, *People v. Ayala* (2000) 23 Cal.4th 225, 255.)

Relying on *Florida v. J.L.* (2000) 529 U.S. 266, appellant claims the officer violated his rights by detaining and searching him based only on an anonymous tip.

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[1] It was stipulated for purposes of the preliminary hearing that the substance was analyzed and found to contain 3.12 grams of powder containing methamphetamine.

We disagree. The contact with Officer Marsh was a consensual encounter during which appellant admitted possessing methamphetamine and gave permission to retrieve it.

"[I]n order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officer's requests or otherwise terminate the encounter." (*Florida v. Bostick* (1991) 501 U.S. 429, 439.)

"[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions. [Citations.] Nor would the fact that the officer identifies himself as a police officer, without more, convert the encounter into a seizure requiring some level of objective justification. [Citation.] The person approached, however, need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way. [Citations.] He may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds. [Citation.] If there is no detention—no seizure within the meaning of the Fourth Amendment—then no constitutional rights have been infringed." (*Florida v. Royer* (1983) 460 U.S. 491, 497-498.)

In the present case, there was no force when Officer Marsh approached appellant and his two companions. The officer's weapon was not drawn, the lights and siren on his vehicle were not activated, and the vehicle was not blocking appellant's path. There was no evidence the officer physically touched appellant or used language or verbal tone indicating compliance with the officer's request was required. (See *In re Manuel G.* (1997) 16 Cal.4th 805, 821.) While Officer Marsh testified he had detained appellant, "[t]he officer's uncommunicated state of mind and the individual citizen's subjective belief are irrelevant in assessing whether a seizure triggering Fourth Amendment scrutiny has occurred. [Citation.]" (*Id.* at p. 821.) Further, asking that someone remove his hands

from his pockets "does not convert the encounter into a detention." (See *People v. Franklin* (1987) 192 Cal.App.3d 935, 941; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1238.)

Unlike *People v. Garry* (2007) 156 Cal.App.4th 1100, cited by appellant, there was no evidence Officer Marsh suddenly illuminated appellant with a police spotlight or that he rushed directly at appellant, setting "an unmistakable 'tone,'. . . through nonverbal means, 'indicating that compliance with the officer's request might be compelled.' [Citation.]" (*Id.* at p. 1112.) Further, unlike *People v. Roth* (1990) 219 Cal.App.3d 211, 215, cited by appellant, there was no finding by the trial court that Officer Marsh had ever issued a command to appellant. The encounter between appellant and Officer Marsh was a consensual one that resulted in appellant's admission that he was carrying methamphetamine and permission to retrieve the drugs from his pocket.

DISPOSITION

The judgment is affirmed.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.